



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
1411 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3231

NGB-EO

12 February 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Title II, Notification and Federal Employment Anti-Discrimination and Retaliation Act (The No FEAR Act or The Act), Pub. L. No. 107-174, 116 Stat.566, May 15, 2002 (5 U.S.C. 2301) and Title III, EEO Complaint Data Disclosure

1. The purpose of this memorandum is to provide guidance and mandatory enactment of subject matter. The No FEAR Act although enacted on May 15, 2002, mandatory compliance became effective October 1, 2003. The Act was established to increase the accountability regarding discrimination and whistleblower laws by requiring federal agencies to pay for awards, judgments and settlements primarily. General data is provided hereafter regarding the Act which SEEM's, HRO's and the Adjutant Generals are required to comply with:

a. Section 102 will provide significant insight into Congress' intent regarding the Act. Federal agencies will not retaliate for judgments or settlements by reducing compensation, benefits or staff nor is the mission of the agency to be compromised as a result of reimbursement requirements. Unfounded allegations against managers or violation of the accused managers rights will occur to meet accountability. Agency Comptrollers are expected to reimburse the Department of Justice (DOD) Judgment Fund within a reasonable time, with the ability to extend the reimbursement over several years to avoid reductions in force, or reduction of employee benefits, furloughs or adverse effect against the agency's mission.

b. Section 104, provides relative effective date as addressed in paragraph 1.

c. Section 201, contains reimbursement requirements that applies to all payments made by the DOD Judgment Fund for awards, judgments, and settlements to any federal employee, former employee, or applicant in connection with any proceeding regarding discriminatory practices, reprisal or retaliation.

d. Section 201(b), provides amount reimbursable out of available funds for defendant agency's operational expenses, excluding appropriated funds for enforcement of any Federal law to the DOD Judgment Fund.

e. Section 202, requires notification prohibiting discrimination and retaliation in writing to include uses of the Internet and informs that each agency shall provide training regarding rights and remedies under the No FEAR Act.

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f. Section 203, issues direction that each agency shall report annually the number, status, complaint type and reimbursed amount to the Judgment Fund separating attorney fees for prohibited discrimination cases to the Congress, Equal Employment Opportunity (EEOC or the Commission) and the Attorney General.

(1) In the instance of a finding of discrimination, a detailed policy description implemented by the agency is required relative to disciplinary action against the employee found to have participated in discrimination or prohibited personnel practices.

(2) Actions taken or planned improvement of agency EEO processes are to be examined through trends, casual analysis and knowledge obtained through experience, and any budget adjustments required meeting compliance with reimbursement.

(3) The first report will include data for each preceding fiscal years not to exceed Five years if available.

g. Section 204(a), Title II rules will be implemented by OPM requiring a study of best practices relating to appropriate disciplinary actions in the case of a finding for discriminatory or prohibited personnel practices and based on the results advisory guidelines of best practices federal agencies may follow will be incorporated.

h. Section 204(b), Each agency within thirty (30) days after advisory guidelines have been issued shall submit a written statement to the Congress, EEOC and the Attorney General specifying if the agency will adopt the guidelines or specify why if not.

i. Section 206, requires GAO to conduct several studies to include the effects of eliminating pre-EEOC exhaustion requirements and the costs to the Department of Justice (DOJ) defending discrimination and retaliation costs.

2. Title III Complaint Data Disclosure, Section 301 sets forth required data to be posted on the Internet by federal agencies.

a. Generally, the data will relate to the number of claims, raised issues, bases of discrimination and information of complaint processing.

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3. Additional information regarding the No FEAR Act may be found on the Internet under The Equal Employment Opportunity Commission issued on January 26, 2004, the final interim rules for Title III of the No FEAR Act. To view them, click on website, "<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/04-1505.htm>. To find out about the reaction to these rules, click on <http://www.govexec.com/dailyfed/0104/012604a1.htm>."

4. The point of contact for the No FEAR Act Title II and Title III Complaint Data Disclosure is Ms. J. Page Eversizer, Chief, Complaints Management Branch at CM (703) 607-0788 or DSN 327-0788 for assistance.



FELTON PAGE

Director, Office of Equal Opportunity
and Civil Rights
National Guard Bureau

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